**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**SECOND APPEAL NO. 800 OF 2004**

Latif Vajirbhai Shaikh ... Applicant

V/s

Bashir Vajirbhai Shaikh ... Respondent

Mr. R.A. Shaikh i/by J.B. Shaikh for the applicant.

Mr. Gabriel Pillai for the respondent.

**CORAM: P.V. KAKADE, J.**

**DATED: 21ST DEC., 2004.**

**P.C.:**

1. This second appeal is preferred by the appellant - defendant against the judgment and order passed by the District Judge, Satara, dated 31.3.2004 dismissing his appeal and confirming the order and judgment passed by the Civil Judge, Jr.Divn., Dahiwadi, dated 10.11.1998 decreeing the plaintiff's suit against defendants 2 and 3 and granting partition of the property by metes and bounds with possession.

2. I have heard the learned counsel for both parties. Perused the record.

Plaintiff, defendant No. 1 and defendant No. 3 are the real brothers. They are from Village Wadgaon, Tal. Man. According to the plaintiff, he and his brothers were residing together. Their father Vazirbhai and defendant No.3 being eldest amongst brothers, used to look after family affairs. The suit land was purchased in the name of defendant No.3 and all these brothers contributed sale proceeds which were paid to the Vendor. Latif thereafter was looking after the suit land for himself and for his brothers. The name of the plaintiff, defendant No.1 and Latif were recorded to revenue record after this land was purchased having 1/3 share each. Defendant No.3 on 6.3.1991 sold 1/3 share to defendant No.2. There was no partition by metes and bounds between plaintiff and his brothers. Defendant No.3, therefore, was not competent to alienate specific share from suit land and when plaintiff asked defendant No.3 to give his separate share, he did not agree to it. Hence, the suit was filed by the plaintiff for partition of suit land and 1/3 share thereof.

3. Defendant No.1 filed his written statement and supported the plaintiff. Defendant No.3 challenged the suit on the ground that he purchased the suit land from

his own income and none other contributed him any amount in purchasing the land. Defendant No.2 filed written statement in the matter. According to him, the suit land is separate property of defendant No.3 and he sold his specific share out of it to defendant No.3 for Rs.60,000/- in 1991. Remaining portion from this block number was in possession of defendant No.3 and, therefore, she is bonafide purchaser for value without notice of defendant No.1 on one hand and defendant No.3 on the other hand. Hence the suit is sought to be dismissed.

4. On the basis of these pleadings, the learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendant Nos.1 & 3 purchased the suit land in the name of plaintiff by contributing the sale proceeds paid to the Vendor and plaintiff has 1/3 share in the suit land and hence the suit came to be decreed.

Being aggrieved by the said decree and order, the appeal was preferred in the District Court, Satara. The District Judge, Satara concluded the dispute on merits and on the basis of available evidence, findings were recorded by the learned lower appellate Court Judge

holding that the plaintiff has proved that defendant No.1 did contribute in purchasing the land alongwith the plaintiff and, therefore, he was entitled to the relief of partition and separate possession. The appeal was dismissed and hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The question of law sought to be raised is to the effect, whether a self acquired property of Mohomedian person would be treated as "Joint Property" and subjected to division thereof as happens in the case of Hindu Undivided Family (HUF) on the pretext that Indian Muslims also generally use to follow the similar culture of the majority Hindu’s religion. In my considered view, this issue is not at all relevant and, therefore, cannot be a substantial question of law. Evidence on record shows that it is not in dispute that property was purchased in the name of Latif in the year 1978 for consideration of Rs.10,000/-. It is also in the evidence that, after purchasing the land in 1978, it was developed for constructing well in the land for which purpose loan was raised from District Land Mortgage Bank and it was repaid not only by Latif but also by plaintiff as well as defendant No.1. Therefore,

the issues of facts are seen to be based on positive evidence led by both parties and, therefore, would brook no interference.

6. Reference may be made to the observations made by great Jurist Mulla in his Principles of Mohomedian Law. Chapter 6 para 7 of Mulla's Principles of Mohomedian Law (19th Edn.), reads thus -

> "When the members of a Mohomedian family live in commensality, they do not form a joint family in the sense in which that expression is used in the Hindu Law. Further, in the Mohomedian Law, there is not, as in the Hindu Law, any presumption that the acquisitions of the several members of a family living and messing together are for the benefit of the family. But if during the continuance of the family properties are acquired in the name of the managing member of the family and it is proved that they are possessed by all the members jointly, the presumption is that they are the properties of the family, and not the separate properties of the member in whose name they stand."

In my considered view, this is the answer to the so-called question of law sought to be raised in this appeal. Be that as it may, the fact remains that both the Courts below have appreciated the entire evidence involved

in the matter in just, proper and correct manner and would brook no interference.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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